

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN DAVE LEWIS**, on January 5, 2001 at 8:00 A.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Dave Lewis, Chairman (R)  
Sen. John Cobb, Vice Chairman (R)  
Rep. Edith Clark (R)  
Rep. Joey Jayne (D)  
Sen. Bob Keenan (R)  
Sen. Mignon Waterman (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Pat Gervais, Legislative Branch  
Lois Steinbeck, Legislative Branch  
Sydney Taber, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: Agency Overview and Agency-wide Legislative Staff Issues, 2001  
Executive Action: None.

#### **Hearing on Department of Health and Human Services**

**{Tape : 1; Side : A; Approx. Time Counter : 0.7 - 2.5}**

**CHAIRMAN DAVE LEWIS, HD 55, Helena,** introduced himself and the staff and commented on the Committee's responsibility to the public to provide the most services with the money available, and he acknowledged the Committee's reliance on the Department of Public Health and Human Services to provide expertise and suggestions.

**Opening Statement by Director Gray**

***{Tape : 1; Side : A; Approx. Time Counter : 2.5-25.9}***

**Gail Gray, Director of Department of Public Health and Human Services (DPHHS)**, gave a global overview of DPHHS **EXHIBIT(jhh03a01)** and submitted a presentation outlining the various Department divisions and their responsibilities to the public **EXHIBIT(jhh03a02)**. She thanked those who worked on the budget and introduced division administrative staff:

Russ Cater, Chief Legal Counsel  
Mike Billings, Operations and Technology  
Denzel Davis, Quality Assurance  
Hank Hudson, Human and Community Services  
Chuck Hunter, Child and Family Services  
Joe Mathews, Disability Services  
Dan Anderson, Addictive and Mental Disorders  
JoAnn Dotson, Health Policy and Services  
Mike Hanshew, Senior and Long Term Care Services  
Mary Ann Wellbank, Child Support Enforcement

The presentation reviewed the DPHHS mission, outlining six key accomplishments in welfare reform, transition of mental health services from managed care to state oversight, the Children's Health Insurance Program (CHIP), child support and enforcement record collections, and the increase in adoption finalizations. Funding issues were highlighted.

***{Tape : 1; Side : A; Approx. Time Counter : 25.9-27.0}***

**Closing by Director Gray**

***{Tape : 1; Side : A; Approx. Time Counter : 27.0-28.8}***

**Questions from Committee Members and Responses:**

In response to a question by **SEN. MIGNON WATERMAN, SD 26, HELENA**, regarding the large drop in federal funds but not general funds in Program 02 Human and Community Services in the second year, **Director Gray** stated that the reserves would be used for TANF and some other areas. The change between fiscal years was due to the request for a biennial appropriation.

***{Tape : 1; Side : A; Approx. Time Counter : 28.9-32.7}***

In response to a query by **REP. JOEY JAYNE, HD 73** on the U.S. Supreme Court decision in the Olmstead Case, **Director Gray** explained that the case directs that the aging and disabled population should be served in the least restrictive environment.

***{Tape : 1; Side : A; Approx. Time Counter : 32.8-47.6}***

**Discussion**

**CHAIRMAN LEWIS** distributed a letter **EXHIBIT(jhh03a03)** concerning the EPSDT program and the difference in the rate of pay for providers of services for children and adults. **SEN. WATERMAN** explained that the EPSDT reimbursement rate is different than the Home and Community Based Waiver reimbursement rate for identical services; therefore, in communities where there are limited providers the providers migrate to the program that pays the most.

**Lois Steinbeck, Legislative Fiscal Division Staff**, explained that EPSDT rates for children would be set by Program 7, Health Policy Services Division, and direct care personal assistance rates for senior long-term care adult rates would be set by Program 22, Senior and Long Term Care Division. The hearing for Program 7 is two weeks before the hearing on Senior and Long Term Care; it would be better to address it early within the Program 7 hearings. **SEN. WATERMAN** wants to know the rationale if indeed the rates are different.

**{Tape : 1; Side : B; Approx. Time Counter : .07}**

**Presentation on Budget Analysis Summary**

**Lois Steinbeck** began presentation on the Budget Analysis Summary **EXHIBIT(jhh03a04)**.

**{Tape : 1; Side : B; Approx. Time Counter : 01.3}**

**Pat Gervais, LFD Staffer**, went over the pieces of legislation that DPHHS has been involved in. She explained that HB 2 in the 1999 session directed DPHHS to work on a uniform state-wide system of funding TANF maintenance of effort and eligibility determination for cash assistance, food stamps and medicaid, and foster care program costs. The plan was to provide a predictable and adequate source of funding and to eliminate the historic distinction in funding of human services costs between assumed and nonassumed counties.

DPHHS worked on HB 124 with the Local Government and Structure Committee which would require that certain revenues from city and county governments be forwarded to the state. The state would then provide for the cost of the public assistance programs from the general fund.

Additionally, DPHHS worked with the Montana Association of Counties (MACo), and there may be an additional bill that would limit the county contribution to cost at the five-year average from FY95 through FY99. DPHHS estimates that this option would require an additional appropriation of \$1.5 million of general fund. This legislation is in draft form and has not been

introduced yet. The Executive Budget does not include a decision package requesting additional funding.

**{Tape : 1; Side : B; Approx. Time Counter : 1.6}**

**SEN. COBB, SD 25, Augusta**, asked if the executive branch has indicated how DPHHS is supposed to pay for the increase. **Ms. Gervais** said that it has said nothing. To **SEN. COBB's** question as to whether the Executive supports the bill, **Ms. Gervais** responded that the Executive supports HB 124, or that the Executive may support the alternative bill worked on with MACo, although its final form is not known. **SEN. COBB** asked if it was revenue neutral; **Ms. Gervais** stated that it was not, and the alternative that MACo was working on would require an additional \$1.5 million in general fund.

HB 2 from the 1999 Legislature directed that DPHHS work with the Supreme Court to develop joint rules, regulations, and procedures for the foster care review process. LC 0055 would: make the foster care citizen review board process a state-wide model; would implement new training requirements for review board members; include in the statute a list of parties invited to reviews; and open review board deliberations to all present at the review, except that the presiding officer could close deliberations due to threat of reprisal or if confidentiality laws preclude open deliberations.

The Executive Budget does not include additional funding for the change from foster care review to citizen review.

**{Tape : 1; Side : B; Approx. Time Counter : 8.4}**

**SEN. COBB** asked how much the change would cost and **Ms. Gervais** stated that there is no estimate at this time. **SEN. WATERMAN** stated that she is carrying the bill, and the cost of the proposal to go state-wide is \$1.5 million. **Ms. Gervais** stated that the proposal would fund the citizen's review board with general fund and federal IV E funds. **SEN. WATERMAN** asked if it is new IV E funds or whether IV E funds are being diverted. **MS. Gervais** stated that the IV E is an entitlement program with no maximum and anticipates that it will be used for the funding.

**{Tape : 1; Side : B; Approx. Time Counter : 10.7}**

**Lois Steinbeck** spoke on the CHIP eligibility expansion. The Martz budget reduced funding available for the CHIP expansion from 175% of the federal poverty level to 160%. **John Chappuis, Bureau Chief, Financial Operations and Support Services**, stated that LC 0441 was pre-introduced and allowed DPHHS to expand eligibility to up to 200% of poverty. The appropriation was sufficient to expand a certain number of children, but the Legislature could consider expanding financial eligibility for

CHIP under the bill as written if DPHHS had additional general fund. No amendment would be necessary if the Legislature would like to continue that policy. If the Legislature wants to establish a policy that eligibility be maintained at no greater than 160% of poverty, an amendment would be needed.

**{Tape : 1; Side : B; Approx. Time Counter : 13.2-16.6}**

**SEN. WATERMAN** stated that there would be another recommendation coming out of HJR 35, the Subcommittee of the legislative Finance Committee on Mental Health that asks that the programs keep eligibility the same. **Ms. Steinbeck** explained that \$1 million was added to the mental health budget to provide CHIP match for additional CHIP eligible children who would also be receiving mental health services. The change in the mental health program does not assume that non-CHIP eligible children in families with incomes up to 175% of poverty would be eligible, and are probably not covered. The Executive Budget would not fulfill the entire recommendation of the HJR 35 Committee since CHIP eligible children would receive mental health services, but children from families with incomes comparable to the level of CHIP eligibility that were not CHIP eligible would not be eligible for mental health services. The recommendations will be discussed in the Addictive and Mental Disorders Division budget.

**{Tape : 1; Side : B; Approx. Time Counter : 16.6-17.6}**

In response to a question by **SEN. COBB**, **Ms. Steinbeck** stated that general fund savings would be \$200,000 if CHIP eligibility were left at 150%.

**{Tape : 1; Side : B; Approx. Time Counter : 17.6}**

**CHAIRMAN LEWIS** asked if LC 0041 was the Martz proposal or the original proposal. **Mr. Chappuis** said that it was still based on the original proposal.

**{Tape : 1; Side : B; Approx. Time Counter : 18.1}**

**Ms. Steinbeck** went over an amended table **EXHIBIT(jhh03a05)** for the budget analysis. The Martz budget increases general fund by \$52 million; the Racicot budget increased it by \$70 million. Overall there is a 19.5% change between the biennia. The largest growth comes in benefits and claims, and most growth in benefits and claims is in Medicaid services - federal funds. Food stamp benefits are entirely federally funded. The program is no longer an off-budget expenditure within DPHHS.

**Pat Gervais** clarified that the DPHHS is going to electronic benefit transfer of food stamps; the cash would be drawn from the federal government and placed in a state treasury account, which under appropriation laws requires an appropriation. Since the

cost of food stamps were previously not paid from the state treasury, an appropriation was not required in past biennia.

**Ms. Steinbeck** explained that it is not necessarily an increase in state spending, but it is an increase in the way it is accounted for in the state budgeting system.

**{Tape : 1; Side : B; Approx. Time Counter : 24.1}**

In response to a question by **CHAIRMAN LEWIS**, **Ms. Steinbeck** explained that the change was \$287 million, and that it looks like a growth in state spending because the Legislature does not deal with nonbudgeted expenditures.

**Ms. Steinbeck** explained the \$37 million increase in federal and state special revenue to budget expenditures from Medicaid drug rebates was included in the budget in response to a legislative audit finding. It is a change that is due to a new method of rebate accounting in order to come into compliance with GAP.

**{Tape : 1; Side : B; Approx. Time Counter : 26.2}**

**SEN. COBB** asked if the total gross fund is \$250 million. **Ms. Steinbeck** corroborated. **CHAIRMAN LEWIS** said that the bill to allow this deposit in the state revenue fund has not been introduced. The fiscal analysts have concerns about using the state special revenue fund; the budget office doesn't want it to go into the general fund because of concerns about whether the revenue estimates will be accurate.

**SEN. WATERMAN** mentioned Maine's attempt to require drug companies to rebate and asked why the state could not require drug companies to rebate to Medicare as the federal government does.

**Ms. Steinbeck** clarified that Maine's law was overturned on Interstate Commerce provisions because the state tried to tell manufacturers that they could not sell the drug in the state for any more than they sold it outside the state. The Medicaid rebate program piggybacks on the Medicare rebate program. There is a rebate program in the mental health services general fund program. She has asked DPHHS to report how much has been received in rebates and suggested that the subcommittee examine the state rules. **SEN. WATERMAN** also wants to know what the effect on companies will be if they do not participate, as leverage in creating a universal drug rebate system.

**Ms. Steinbeck** went over changes in Governor Martz's budget **EXHIBIT(jhh03a06)**. An updated table on the Medicaid biennium budget request was passed out **EXHIBIT(jhh03a07)**.

**{Tape : 1; Side : B; Approx. Time Counter : 40.5-48.4}**

**SEN. WATERMAN** asked if an intergovernmental transfer with the county portion of the alcohol tax would increase the revenues for alcohol treatment. She requested review of deadlines on bills so that this issue can be worked in. **Ms. Steinbeck** clarified that any bill required to implement an appropriations act can be requested late in the process.

***{Tape : 2; Side : A; Approx. Time Counter : 0.1-4.8}***

**Ms. Steinbeck** explained that the greater proportion of federal funding in the Medicaid budget was because the state match rate decreased from about 28% in FY00 to 27% in FY03.

***{Tape : 2; Side : A; Approx. Time Counter : 4.9}***

Concerns over efforts by DPHHS to reduce staff or services to stay within budget were discussed. **Ms. Steinbeck** referred to the LFD Budget Analysis and a staff issue noting that the general fund cost of Medicaid exceeded growth rates established in HB 2. **Ms. Steinbeck** suggested that the Committee may want to request from DPHHS whether it would reduce any services or eligibility in the remaining six months of the year to live within the growth rates established in HB 2 and suggested that if the Committee wishes to continue this language it may wish to identify, in cooperation with DPHHS, the steps it would take if general funds caps are exceeded. Actions that the Committee takes are constrained by law, but it can specify in statute the steps DPHHS would take if it exceeded the established general fund growth rates. **SEN. WATERMAN** questioned whether the legislature has authority to do this. **SEN. COBB** questioned whether the CHIP and other programs should be expanded if Medicaid programs can not be afforded. **Ms. Steinbeck** said that she will ask **Greg Petesch, Director of Legal Services for the Legislature**, about the constitutional authority. **Ms. Steinbeck** suggested that if the Committee would like to review savings measures that it let DPHHS know so that DPHHS can begin to analyze options for its consideration.

***{Tape : 2; Side : A; Approx. Time Counter : 13.5}***

**Ms. Steinbeck** discussed the tobacco settlement trust fund, and handed out an updated table **EXHIBIT(jhh03a08)**. A minimum of 40% of tobacco proceeds must be deposited to the trust fund. The issue with the tobacco trust fund is that the executive budget includes \$2.7 million of trust funds available for appropriation for provider rate increases. There is another \$1 million in the trust fund that would be available for legislative appropriations according to legislative staff estimates. Constitutional initiative language states that the Legislature cannot supplant general fund spending for programs that existed on a certain date; it can be used to offset current general fund within the budget or new programs.

**Ms. Steinbeck** handed out an update of the table for provider rate increases **EXHIBIT(jhh03a09)** and a comparison of the Racicot budget and Martz budget for provider rate increases **EXHIBIT(jhh03a10)**. The Martz budget includes \$800,000 less general fund in provider increases, but \$500,000 total funds more than the Racicot budget. DPHHS is calculating the rate of increases. **Bob Olson, Montana Hospital Association**, said that there were seven hospitals involved in the intergovernmental services transfer. **Ms. Steinbeck** has asked DPHHS to provide the rationale for changes in provider rates.

**{Tape : 2; Side : A; Approx. Time Counter : 20.7}**

**Ms. Gervais** went over foster care rate increases in the budget analysis. Funding included in the executive budget is only sufficient to provide a rate increase the first year of the biennium and to sustain the rate increase for the second year of the biennium. Additionally, regarding subsidized adoption rate increases, the executive budget was inconsistent with its stated requests per year. Adoptions finalized in the fiscal year will see an increased cost, but adoptions finalized prior to that fiscal year remain at the same level, unless there is review or renegotiation.

**{Tape : 2; Side : A; Approx. Time Counter : 24.0-26}**

**Ms. Gervais** discussed increases in the developmental disabilities budget to raise wages and benefits for direct care workers and staff of nonprofit private corporations.

**{Tape : 2; Side : A; Approx. Time Counter : 26.0- 37.9}**

**Ms. Steinbeck** discussed provider rate increases, particularly nursing home rates which will go from price-based to cost-based rates. Intergovernmental transfers are included this fiscal year, which will allow nonstate owned, but public facilities (county nursing homes and hospitals, etc.) to spend a portion of funds they use to support the facility to draw additional federal medicaid funds. The state can use the funds as state match to draw down federal funds to enhance Medicaid rates paid to that institution.

**{Tape : 2; Side : A; Approx. Time Counter : 38.2-40.0}**

**SEN. COBB** asked if tribes have their own nursing homes and if they use match funds or federal funds. **REP. JAYNE** asked which tribes contribute to matching funds. **Mike Hanshew, Senior and Long Term Care Administrator**, responded that he would check.

**{Tape : 2; Side : A; Approx. Time Counter : 40.4-46.0}**



In response to **CHAIRMAN LEWIS, Mr. Hanshew** discussed further the intergovernmental transfer funding issues in regard to nursing homes and the manner in which states have used the funds.

**{Tape : 2; Side : A; Approx. Time Counter : 46.1-48.4}**

**REP. JAYNE** asked for examples of county funded providers. **Ms. Steinbeck** responded that counties can levy funds to support nursing homes, hospitals, and community mental health centers.

**{Tape : 2; Side : B; Approx. Time Counter : .1- 8.6}**

**Ms. Gervais** gave background on issues regarding the Olmstead decision, which is based on the American Disabilities Act, that prohibits discrimination based on disabilities and the Garrett case, which is before the U.S. Supreme Court now. Velveta Golightly Howell from the Denver Regional Office of Civil Rights will make a presentation on Friday, January 12, 2001, to discuss this decision.

DPHHS has proceeded with actions to comply with the Olmstead decision and has begun a self evaluation process. The executive budget includes no recommendations related to Olmstead. The Committee may wish to review DPHHS plans to comply with Olmstead and request that the Department identify proposals that would assist it in complying with Olmstead, provide oversight on the Olmstead decision in the biennium, or may wish to consider language in HB 2 to report to an interim committee.

**{Tape : 2; Side : B; Approx. Time Counter : 10.2-12.8}**

**Ms. Steinbeck** noted that the Department will also make presentations regarding Olmstead on Thursday and Friday of the next week. **SEN. WATERMAN** would like the office of Civil Rights or DPHHS to update the Committee on Olmstead actions in Montana and would like to see the Department's plans. The Olmstead decision can affect licensing, institutions, and waiting lists.

**{Tape : 2; Side : B; Approx. Time Counter : 12.8-24}**

**Ms. Gervais** presented an overview of the Temporary Assistance for Needy Families (TANF) block grant, and its impact on multiple divisions of the agency.

**{Tape : 2; Side : B; Approx. Time Counter : 25-32}**

**Ms. Steinbeck** discussed CHIP funds, policy tradeoffs, and decisions the Legislature may want to consider in regard to CHIP funds and mental health services for children. Governor Martz's budget made two changes to CHIP: increased the general fund for annualization of CHIP start up during FY00 because there was an

error in the original Executive Budget and reduced the amount available for expanding benefits from 175% to 160% of poverty.

***{Tape : 2; Side : B; Approx. Time Counter : 32-48}***

**Ms. Steinbeck** handed out the 15% reduction plan that each division would talk about **EXHIBIT(jhh03a11)** and went over the summary of the budget status report **EXHIBIT(jhh03a12)**.

***{Tape : 3; Side : A; Approx. Time Counter : 0.4-6.1}***

**CHAIRMAN LEWIS** closed the meeting with a reminder that Monday, DPHHS will go over its budget shortfall of \$15.9 million. The mental health System contractor recommendation will be presented later this month.

**ADJOURNMENT**

Adjournment: 10:10 A.M.

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REP. DAVE LEWIS, Chairman

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SYDNEY TABER, Secretary

DL/ST

**EXHIBIT** (jhh03aad)